Committee for Justice

OFFICIAL REPORT (Hansard)

Legal Aid and Coroners' Courts Bill: Attorney General for Northern Ireland

28 May 2014

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sydney Anderson
Mr Tom Elliott
Mr William Humphrey
Mr Seán Lynch
Ms Rosaleen McCorley

Witnesses:
Mr John Larkin QC Attorney General for Northern Ireland

The Chairperson: I welcome the Attorney General, Mr John Larkin QC, to the meeting. Obviously, you have picked up on some of the Health Minister's issues, and members may also have issues in other contexts. I will hand over to you.

Mr John Larkin (Attorney General for Northern Ireland): I am very grateful, Chairman. Once again, it is a pleasure to be before the Committee.

I draw attention to the letter from Ms McMcCallion to the Committee Clerk dated 30 April. That sets outs a different statutory text from the one that was previously circulated to the Committee. This text makes it clear that it is confined to deaths occurring within a health and social care context. The text seems to me to be largely straightforward. I note the concerns that you have helpfully reproduced from the Health Minister. For two reasons, it does not strike me that this will create a burden on the health service. The policy context ought to be tolerably clear. It has come to my attention, directly from my experience and from the media, that there is concern about deaths occurring in a hospital context in particular that have not been referred to the coroner. There appears to be a gap in potential investigation for accountability purposes. This is designed to close that gap.

Textually, I do not think that this is capable of overreach. The context seems to me to be tolerably clear. The second more pragmatic reason is that, even if I wished, which I do not, I do not have the human resources available to put a burden, as it were, on the health service. That is, of course, in no way, any part of my function. There is a concern, however, that deaths can occur in a hospital context, and at present it is largely the decision of doctors as to whether those matters are referred onwards to the coroner. The amendment will plug that gap. It will be possible to obtain information, for example, about serious adverse incidents that have not been referred to the coroner or, indeed, deaths that may be regarded as suspicious, that give rise to concern or that may not be classed as serious adverse incidents. One concern would be that, if one confined it ab initio only to cases of serious adverse incidents, one might find some elasticity in the definition of "serious adverse incident".

With that briefest of outlines, I am happy to respond to questions from the Committee.

The Chairperson: Some of the evidence that we have heard suggests that the amendment might usefully be applied across the board. Let me cut to the chase: there will be those who want this power to be applicable for investigations into the past, particularly to be used against the state. Could the amendment in any way open the floodgates for those with that agenda?

Mr Larkin: No. The amendment is textually confined to health or social care, so it could not do that. I understand the argument that this should be a broader power. Indeed, the draft that was submitted earlier — although it was always clear that the policy context was, as far as I was concerned, health or social care — could have lent itself to broader application. This text does not do so. There is, as we know, a huge debate, to which I have contributed, as to how we deal with our troubled past.

I suggest that this is designed to address an issue that is very much alive here and now. At this stage, it is probably not a good idea to give a general power that might be capable of a legacy application, other than in the context of a more global approach to those difficult issues. However, I confirm that this text cannot be used in that way.

Mr Elliott: You are very welcome, and thanks for the information. The Minister of Health has queried why the Bill is being used to change legislation. What is the reason for that?

Mr Larkin: The clue is in the title: the Legal Aid and Coroners' Courts Bill. It deals with an aspect of coronial procedures, so it strikes me as falling squarely within the context of the Bill. The issue that the amendment seeks to address is, I dare say, reasonably urgent. We are all familiar with media reports about deaths occurring without being referred to the coroner. This is a timely opportunity to address that important issue.

Mr Elliott: Do you think that is an easier way than amending the Coroners Act (Northern Ireland) 1959?

Mr Larkin: This will do that by introducing a new section 14A.

Mr Elliott: It will amend it directly without going through another Bill?

Mr Larkin: This introduces a new section 14A —

Mr Elliott: I know that it does. Could you amend the Act without using this Bill?

Mr Larkin: You would need a separate Bill for that.

Mr McCartney: How would it come to your attention to use that power?

Mr Larkin: That is a very good question. I would explore ways to draw out the information efficiently. I am conscious that the information that tends to come to me is pretty largely Belfast-concentrated. We would probably engage in a number of pilot exercises in hospitals outside Belfast and seek information about serious adverse incidents that had not been referred to the coroner — for example, from Altnagelvin, to take one place of obvious interest to you, Mr McCartney — and see whether the cases that had not been referred that were classed by medical personnel as serious adverse incidents were cases that ought properly to have been investigated by coronial inquisition. I would imagine that I would not direct an inquest in every case, but at least relatives would have the reassurance of knowing that an independent set of eyes — mine and those of my colleagues — had looked at the circumstances involving their relative's death.

I mentioned "relative's death". It is all very well if the deceased has people who will speak up for him or her in the context of a broader supportive family. I am equally and possibly more worried about the people who have no one to speak up for them, such as those who die elderly and alone. It would be not only my experience but, I suspect, the experience of very many people that, to put it mildly, the quality of attention that patients get is often supported by the quality of representations that are made by a supportive and plainly engaged family circle.

Mr McCartney: As regards placing a burden on, say, medical staff, are there circumstances in which a case could be referred to the Coroners' Court unnecessarily?

Mr Larkin: I certainly would not refer any case to the Coroners' Court that would not be necessary.

Mr McCartney: What about medical people who could feel that, if they do not refer a case, there would be an extra pair of eyes on them, so to speak?

Mr Larkin: In my view, it would be a very exceptional case, which medical personnel class as a serious adverse incident, in which the incident was in any way causative of death, which ought not to go to the coroner. However, as we have plainly seen, such cases do exist. This will close that gap. There is, of course, the category of case that is, in the turn of phrase of Donald Rumsfeld, "unknown unknowns", whereby cases may perhaps properly be classified, or we may think that they ought to be classified, as serious adverse incidents but are not at present.

Mr McCartney: Thank you.

Mr Elliott: I have one quick question. Attorney General, I note that the Law Centre states that it would not circumscribe that power to cover only deaths that occur in hospitals in recognition that the principles apply to other deaths that may fall within the Attorney General's ambit to direct an inquest. Are you confident that the provision would relate only to deaths in hospitals?

Mr Larkin: It would relate to deaths in hospitals or, for example, residential homes. If there were an example of ill treatment in a residential home, that could certainly fall within the purview of this provision. I am very glad that it would.

Mr Elliott: It would not, however, apply outside the health remit.

Mr Larkin: No. It would be within health and social care. Frankly, there are cases that I am looking at that are relative to the past in which it would be very handy to be able to call on the information, but I cannot do that. I am quite clear that this provision cannot be used other than in a health and social care context. There are few enough absolutes in the law, and that is one of them. I am quite certain of that.

Ms McCorley: Do you foresee that, in the case of someone at risk of suicide who was undergoing counselling, a counsellor could be found to be at fault in being neglectful and, therefore, in some way contributing to a death by suicide?

Mr Larkin: That would be a matter for the coroner's inquest to look at. Anecdotally, one knows that there is concern among GPs when they refer patients whom they consider to be suffering from depression, for example, about how some of those cases are dealt with. The kind of cases that you refer to would certainly fall within this provision and the necessary information could be sought about them.

Ms McCorley: I heard about a case last week in which a person — a schoolchild — had suicidal thoughts, and, apparently, the services of a counsellor would not be available for two weeks. You are talking about burdens on health and social care services, and I hear unofficially from people who work in that environment that there are heavy burdens because of the need for counselling for people with suicidal thoughts. I could see how there might be circumstances in which, because of such heavy burdens, people might end up being seen as neglectful and contributing in some way.

Mr Larkin: The reassurance that individual counsellors, conscientiously carrying out often very difficult work, have is that the coroner's inquest does not itself make findings of civil, far less criminal, liability, so it is important to bear that in mind. The function of the coroner's inquest in health and social care cases is to bring understanding to a family so that they can understand how and in what circumstances their loved one met his or her death, and it is also for us, more broadly as a community, to learn lessons. In different contexts, we are all aware of the need to learn more about the awful affliction of suicide in many communities today.

Ms McCorley: I think that this may flag up shortfalls in the system.

The Chairperson: Attorney General, thank you very much.

Mr Larkin: Chairman, thank you.